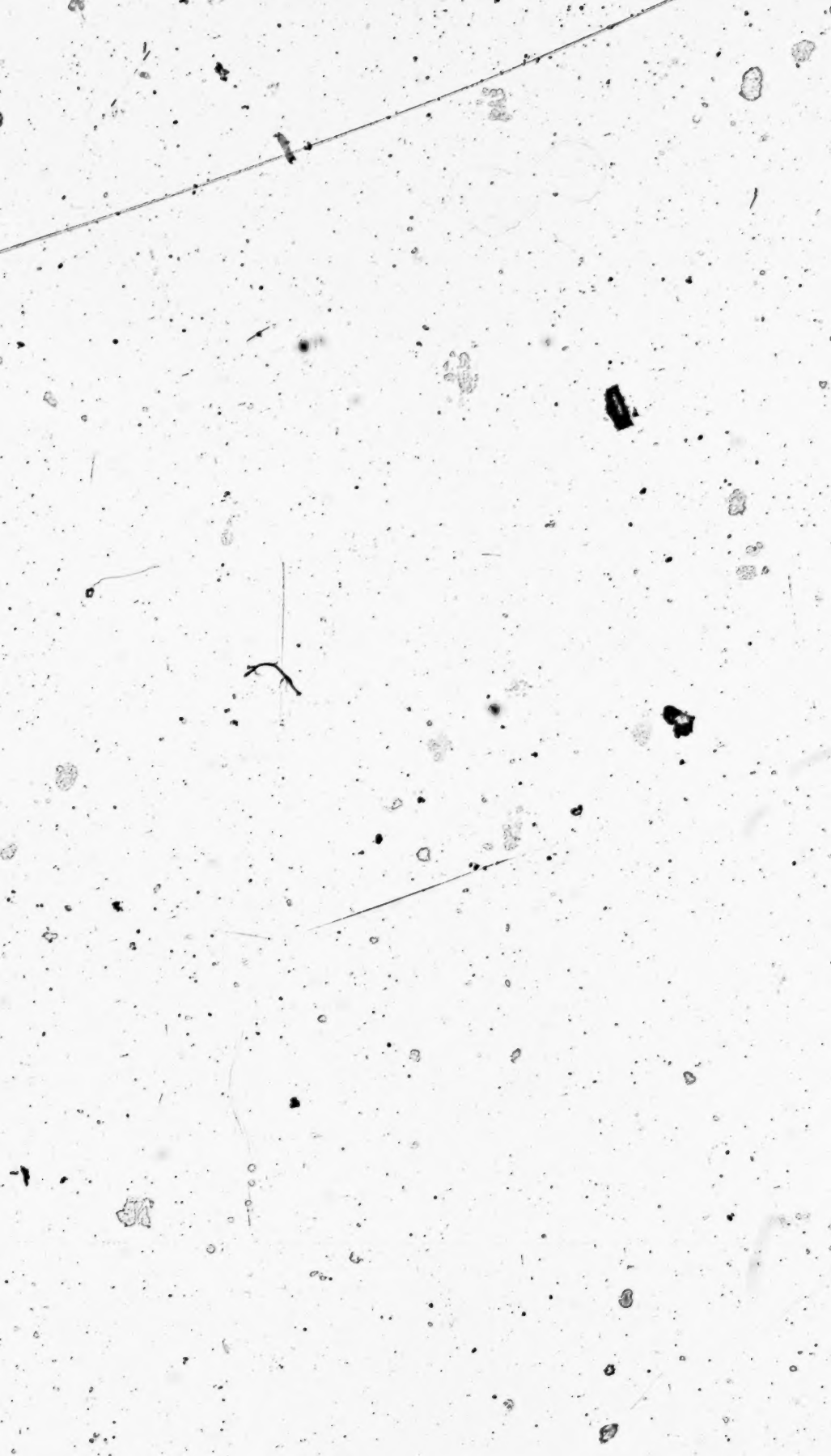

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CHARLES ELMORE CROPLEY
CLERK

In the

Supreme Court of the United States

October Term, 1935

In Equity

No. 10, Original

THE STATE OF WYOMING, *Complainant,*)
vs.
THE STATE OF COLORADO, *Defendant.*)

AFFIDAVITS SUBMITTED ON BEHALF OF THE STATE OF WYOMING

EWING T. KERR,
Attorney General of the State of Wyoming

HAROLD I. BACHELLER,
Deputy Attorney General

ARTHUR KLINE,
Assistant Attorney General.

Solicitors for Complainant, the State of Wyoming

WYOMING LABOR JOURNAL

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THE STATE OF WYOMING,)
Complainant,)
vs. .)
THE STATE OF COLORADO,)
Defendant.)

AFFIDAVITS SUBMITTED ON BEHALF OF THE STATE OF WYOMING

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of Wyoming, by Ewing T. Kerr, Attorney General of the State, under the direction of the Honorable Nels H. Smith, Governor of the State, and in compliance with the request of the Honorable L. C. Bishop, State Engineer of the State and her Commissioner charged with authority in relation to interstate streams, asks leave of Court to submit herewith affidavits of L. C. Bishop, State Engineer, and Ewing T. Kerr, Attorney General, and respectfully requests that said affidavits be taken and considered by this Honorable Court as counter-affidavits to the affidavits submitted by the State of Colorado in her return filed with this Honorable Court on March 25, A. D.

1940, wherein certain officials of the State of Colorado, together with other persons, made affidavits, which are submitted as exhibits in said return, alleging that officials of the State of Wyoming consented to excessive diversions over and above the 39,750 acre feet of water from the Laramie River within the State of Colorado.

Reference is hereby made to the petition for rule to show cause filed herein by the State of Wyoming and more specifically to Exhibit "B" of said petition appearing on page 15 thereof.

AFFIDAVIT OF L. C. BISHOP

THE STATE OF WYOMING)
)ss:
COUNTY OF LARAMIE)

L. C. BISHOP, being first daly sworn upon his oath, according to law, deposes and says:

That he is, and has been, since the 1st day of April, A. D. 1939, the duly appointed, qualified and acting State Engineer of the State of Wyoming, and the Commissioner charged with authority in relation to interstate streams;

That on the 23rd day of June, A. D. 1939, affiant, having received information that water was being illegally taken from the Laramie River in the State of Colorado in excess of 39,750 acre feet, telephoned to M. C. Hinderlider, State Engineer of the State of Colorado, and protested the diversions of said water in excess of said 39,750 acre feet and was assured by said Hinderlider that said headgates on said Laramie River in Colorado would be closed forthwith by said Hinderlider; that thereafter af-

fiant, having received information that said headgates were not closed, sent the following telegram to M. C. Hinderlider, State Engineer of the State of Colorado, on the 29th day of June, A. D. 1939:

"M. C. Hinderlider
State Engineer
Capitol Building
Denver, Colorado

On June 28 Laramie Poudre Tunnel was flowing 65.9 second feet, Skyline Ditch flowing 104.6 second feet. On June 27 Dead Man Ditch flowing 3.3 second feet. Investigation disclosed all meadow land ditches were diverting. Wyoming demands that Laramie Poudre Tunnel, Skyline Ditch, Dead Man Ditch and all meadow land diversions cease forthwith. Advise immediately if this will be done. Would like to have conference with you and Attorney General Saturday morning at ten.

L. C. Bishop,
State Engineer."

Affiant, in company with Ewing T. Kerr, Attorney General of the State of Wyoming, conferred with Colorado officials on the 1st day of July, A. D. 1939, at which time said officials protested in person to Colorado officials against the illegal diversion of water from the Laramie River by the State of Colorado.

That there were present at said conference, Ralph L. Carr, Governor of Colorado, Ewing T. Kerr, Attorney General of Wyoming, M. C. Hinderlider, State Engineer of Colorado, Byron G. Rogers, Attorney General of Colo-

rado, Lawrence Temple and Fancher Sarchet, both of Fort Collins, Colorado, and Ralph Smith of Greeley, Colorado.

That affiant, with Ewing T. Kerr, Attorney General of Wyoming, had requested said conference with said officials of the State of Colorado and other persons interested in water appropriations in Colorado for the purpose of protesting the re-opening of the diversion headgates and diverting water therefrom in excess of the amount allowed to the State of Colorado by the Supreme Court of the United States; that affiant insisted, on this occasion, that the officials of the State of Colorado again close the headgates of said diversions within the State of Colorado and keep said headgates so closed during the remainder of the irrigation season; that officials of the State of Colorado, and other persons interested in water appropriations in Colorado, refused to close said headgates and so advised affiant that they would continue to take water through said diversions notwithstanding the fact that they were exceeding the amount of 39,750 acre feet.

That affiant did not, at any time, consent to the Meadowland appropriators continuing to divert water from the Laramie River in the State of Colorado after the total amount of 39,750 acre feet of water had been diverted from the said Laramie River in the State of Colorado.

Affiant further states that, as State Engineer of the State of Wyoming, he has the custody and control of all the records of water diversions on the Laramie River and that the records of his office show that from June 18 to August 30, 1939, the State of Colorado permitted the diversion of 16,599 acre feet of water over and above the total allocation of 39,750 acre feet of water.

Affiant further states that the 16,599 acre feet diverted by the State of Colorado after June 18, 1939, to and includ-

ing August 30, 1939, was made over the strenuous objection and protest of affiant in behalf of the State of Wyoming.

Further affiant sayeth not.

L. C. BISHOP

Subscribed in my presence and sworn to before me this 28th day of March, A. D. 1940.

RUBY B. SALYER
Notary Public.

(SEAL)

My commission expires March 25, 1943.

AFFIDAVIT OF EWING T. KERR

THE STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

EWING T. KERR, being first duly sworn upon his oath, according to law, deposes and says:

That he is, and has been, since the 2nd day of January, A. D. 1939, the duly appointed, qualified and acting Attorney General of the State of Wyoming.

That on or about the 23rd day of June, A. D. 1939, affiant, having received information that water was being illegally taken from the Laramie River in Colorado in excess of 39,750 acre feet, telephoned the Honorable Byron G. Rogers, Attorney General of the State of Colorado, at Grand Junction, Colorado, and protested the diversions of said water in excess of said 39,750 acre feet and was assured that upon his (Mr. Rogers') return to Denver the matter would be discussed with the officials of the State of Colorado with the view of closing the headgates.

That heretofore, to-wit, on the 1st day of July, A. D. 1939, affiant, in company with L. C. Bishop, State Engineer of the State of Wyoming, met with state officials of the State of Colorado and other persons interested in water appropriations in the State of Colorado; that at said meeting, which was held in the office of the Governor of the State of Colorado, there were present Ralph L. Carr, Governor of Colorado, M. C. Hinderlider, State Engineer of Colorado, Byron G. Rogers, Attorney General of Colorado, Lawrence R. Temple and Fancher Sarchet, both of Fort Collins, Colorado, and Ralph Smith of Greeley, Colorado; that said conference was called by the State Engi-

neer of the State of Wyoming for the purpose of protesting to the officials of the State of Colorado and other persons interested in water appropriations in Colorado the diversion of water from the Laramie River in the State of Colorado in excess of 39,750 acre feet which had theretofore been allocated to the State of Colorado from the Laramie River by the Supreme Court of the United States.

That on said date and at said place, as aforesaid, the State Engineer of the State of Wyoming and affiant made repeated demands upon the State officials of the State of Colorado that they close the headgates on the Laramie River in the State of Colorado and that said officials of the State of Colorado, together with other representatives interested in water appropriations in Colorado, refused to close said headgates.

Affiant further states that he did not, at any time, either before or after the 18th day of June, A. D. 1939, consent to the Meadowland appropriators continuing to divert water from the Laramie River in Colorado after the total amount of 39,750 acre feet had been diverted within the State of Colorado from the Laramie River; affiant further states that after said conference, as aforesaid, was held, he did, on the 7th day of July, A. D. 1939, again make written demand upon the State of Colorado to close said headgates, a copy of said written demand is marked Exhibit "B" in complainant's petition for rule to show cause on page 15 thereof.

Affiant further states that he has examined the hydrographic records in the office of the State Engineer of the State of Wyoming and that said records show that from the 18th day of June to and including the 30th day of August, 1939, the State of Colorado permitted the diversion of 16,599 acre feet of water over and above the total

allocation of 39,750 acre feet allocated to the State of Colorado from the Laramie River in the State of Colorado by the Supreme Court of the United States.

Further affiant sayeth not.

EWING T. KERR

Subscribed in my presence and sworn to before me this 28th day of March, A. D. 1940.

RUBY B. SALYER,
Notary Public.

(SEAL)

My commission expires March 25, 1943.

WHEREFORE, complainant prays that leave of Court be granted to submit these affidavits on behalf of the State of Wyoming, the complainant herein.

EWING T. KERR,
Attorney General of the State of Wyoming

HAROLD I. BACHELLER,
Deputy Attorney General

ARTHUR KLINE,
Assistant Attorney General.

Solicitors for Complainant, the State of Wyoming.